FILE COPY

No. 598

In the Supreme Court of the United States

OCTOBER TERM, 1931

JOHN VANCE PAYLOR, PETITIONER,

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. 693

JOHN VANCE TAYLOR, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

In response to the petition for certiorari, the Government filed a brief in opposition which pointed out that the record disclosed that the bill of exceptions was filed out of time and that therefore the points urged by petitioner could not be reviewed. To this brief petitioner filed a reply in which he prints and relies upon an affidavit signed by the Assistant United States Attorney who represented the Government at the trial of the case. We do not dispute the accuracy of the facts set forth in the affidavit, but merely point out that it is not part of the record.

If this Court should be of opinion that it may nevertheless consider the questions urged by petitioner, we are compelled to say that, irrespective of the question whether the garage searched may be considered as a part of petitioner's private dwell-

ing within the meaning of Section 25, Title II, of the National Prohibition Act, we do not believe that under the facts shown by the record the agents were legally justified in searching this garage without a warrant.

If it be assumed that there was probable cause justifying the issuance of a search warrant, the record in this case discloses no adequate reason or necessity for failure to apply for a warrant before forcibly entering the premises. A motion was made, and denied, to suppress the evidence procured in the search. This motion was renewed, and again denied, upon the trial. Conviction followed, predicated solely upon such evidence.

We believe the search was unreasonable, and the defendant's conviction unwarranted, but do not formally confess error because we feel that where a conviction of a criminal offense has been affirmed in a Circuit Court of Appeals judgment of conviction should not be reversed except by this Court, after examination of the record. Accordingly we submit the case for decision.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
G. A. YOUNGQUIST,
Assistant Attorney General.
MAHLON D. KIEFER,
W. MARVIN SMITH,
Attorneys.

APRIL, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1932

